

REMARKS

Applicants have thoroughly considered the Examiner's remarks in the April 21, 2008 Office action, and the Advisory Action dated July 7, 2008. Applicants have amended claims 1, 17, 32, and 34 in this Amendment C for clarity. Claims 2, 18, and 33 have been canceled. Claim 42 has been newly added. Claims 1, 3-17, 19-32, and 34-42 are pending.

Applicants respectfully request reconsideration of the claims as amended and in view of the following remarks. In particular, Tunnicliffe et al. is directed to defining a threshold which is the maximum bandwidth that a customer is allowed to use. The maximum is specified in a service level agreement, and is shown in FIG. 1 (see Tunnicliffe, col. 3, lines 22-55). However, Tunnicliffe fails to teach, suggest, or even mention defining a minimum acceptable utilization of the network, such as recited in cancelled claims 2, 18, and 33 in the present application.

I. Rejection of Claims 1-41 Under 35 U.S.C. 103(a)

Claims 1-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tunnicliffe et al. (US patent No. 6,272,110 B1) in view of Datta et al. (US patent No. 6,209,033 B1). Applicants disagree, and submit that the cited references fail to teach or suggest, at the very least, comparing a predicted utilization of a network to at least one of a maximum and minimum acceptable utilization of the network at each future time.

Tunnicliffe et al. discloses a system in which a threshold value is defined that is indicative of the maximum amount of bandwidth that a customer is allowed to use in his network. A system predictor is configured to predict a time when network demand will exceed network capacity, a period of time during

which the maximum network capacity will be exceeded, and a time when network demand will reduce below the maximum network capacity. Tunnicliffe et al., Column 3, lines 30-44; and Column 4, lines 52-59).

Datta et al. describes evaluating the present capacity of a network, and determining the effect on the network capacity by changing its configuration. Such changes include relocating / adding / deleting network devices, network users, subnets and/or switches, modifying policies that govern communications and modifying routing or switching algorithms. Once these network configurations are evaluated to determine their effect on network capacity, the superior network configurations are implemented.

In contrast, claim 1 of the present application is directed to comparing a predicted utilization of a network to at least one of a maximum and minimum acceptable utilization of the network at each future time.

Neither Tunnicliffe et al. nor Datta et al. describe nor suggest comparing a predicted utilization of a network to at least one of a maximum acceptable utilization and minimum acceptable utilization so as to maintain the network utilization between the acceptable maximum and minimum. Nowhere in Tunnicliffe et al. or Datta et al. is the concept of minimum acceptable utilization even discussed. For example, the concept of a minimum acceptable utilization is not discussed in Column 3, lines 22-55 of Tunnicliffe et al. as suggested by the examiner. The *maximum* threshold of Tunnicliffe et al. cannot be reasonably interpreted to teach or suggest a *minimum* acceptable network utilization of the present application at least because Tunnicliffe et al. is entirely focused on the maximum threshold.

For at least these reasons, Applicants submit that independent claim 1 is patentable over the cited art. To the extent that independent claims 17 and 32 recite limitations similar to the limitations recited in claim 1, independent claims 17 and 32 are believed to be allowable for at least the same reasons that claim 1 is believed to be allowable.

Moreover, Claim 32 recites the limitation of determining at each of the future times a lead time for adding product to a network for applying a change in network capacity. No combination of Tunnicliffe et al. and Datta et al. teach or even mention the determination of a lead time. For at least these reasons, Applicants submit that independent Claim 32 is patentable over the cited art.

Claims 2, 18, and 33 are cancelled.

Claims 3-16 depend from and further limit claim 1, and are allowable for at least the same reasons that claim 1 is allowable. Applicants request that the rejection of claims 3-16 be removed.

Claims 19-31 depend from and further limit claim 17, and are allowable for at least the same reasons that claim 17 is allowable. Applicants request that the rejection of claims 19-31 be removed.

Claims 34-41 depend from and further limit claim 32, and are allowable for at least the same reasons that claim 32 is allowable. Applicants request that the rejection of claims 34-41 be removed.

For at least these reasons, Applicants submit that claims 1, 3-17, 19-32, and 34-41 are in condition for allowance.

Conclusion

Applicants submit that the claims are allowable for at least the reasons set forth herein. Applicants thus respectfully submit that claims 1, 3-17, 19-32, and 34-41 as presented are in condition for allowance and respectfully request favorable reconsideration of this application.

Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited aspects of the invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

The Commissioner is authorized to charge Deposit Account No. 12-384 for any fees incurred during the pendency of this application.

Respectfully submitted,

/James J. Barta, Jr./

James J. Barta, Jr., Reg. No. 47,409
ARMSTRONG TEASDALE LLP
One Metropolitan Square, 26th Floor
St. Louis, Missouri 63102
(314) 621-5070

JJB\agb
Via EFS